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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,138	06/13/2001	Rolf Stirner	4070-61PUS	8988

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/831138

Applicant(s)

Striner

Examiner

d-ly

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on February 14, 2003.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-11013-15 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-11013-15 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell. Sigurdsson et al teach a device such as claimed but is silent regarding a device for cooling the treated area. Russell discloses that increased patient comfort and safety arises from providing an arrangement for cooling the area to be treated (see column 3, lines 39-65). Thus it would have been obvious to the artisan of ordinary skill to include a skin cooling arrangement as taught by Russell in the device of Sigurdsson et al, since this would provide greater comfort and safety, as taught by Russell, thus producing a device such as claimed.

Claims 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in view of Eastlund et al. Eastlund et al teach the desirability of employing a water jacket on a discharge lamp. It would have been obvious to the artisan of ordinary skill to employ a water jacket in the lamp of Sigurdsson et al, since this would cool the bulb and provide spectral filtration, thus producing a device such is claimed.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in view of Edison. Edison teaches a fluorescent lamp using Calcium Tungstate as the phosphor, which can be coated inside the vacuum tube or inside a tube containing the vacuum tube. Sigurdsson et al teach a fluorescent lamp with the claimed output characteristics. It would have been obvious to the artisan of ordinary skill to employ the lamp of Edison to produce the claimed spectrum, since this is useful for treating acne vulgaris, as taught by Sigurdsson et al, or alternatively to employ

the phosphor coating of Edison in the lamp of Sigurdsson et al, since Sigurdsson et al teach no particular phosphor and to employ Calcium Tungstate, since this has a greater power conversion, as taught by Edison, thus producing a device such as claimed.

Claims 3, 4, 6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in view of Yoshizawa et al. Yoshizawa et al teach an electrodeless discharge lamp powered by a magnetron and situated in a resonant cavity. It would have been obvious to the artisan of ordinary skill to employ filters on the lamp of Yoshizawa et al to produce the claimed output, since this is useful for treating acne vulgaris, as taught by Sigurdsson et al; or in the alternative, to energize the lamp of Sigurdsson et al using the magnetron and resonant cavity of Yoshizawa et al, since this is not critical, produces no unexpected result, and since this configuration provides a longer bulb life than a configuration involving electrodes, and in either case to configure the resonator for E<sub>10</sub> mode, since this is not critical and provides no unexpected result, thus producing a device such as claimed.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in view of Hammer et al. Hammer et al teach the use of zirconium oxide on the electrodes of discharge lamps. It would have been obvious to the artisan of ordinary skill to employ zirconium oxide in the bulb of Sigurdsson et al, since this would prevent the formation of oxide rings, as taught by Hammer et al, thus producing a device such as claimed.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell and Yoshizawa et al as applied to claims 1 and 7 above, and further in

view of Edison. Edison teaches the use of Calcium Tungstate as the phosphor in a fluorescent lamp. It would have been obvious to the artisan of ordinary skill to employ the phosphor of Edison, since this phosphor has a greater power conversion, as taught by Edison, thus producing a device such as claimed.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Salansky et al. Sigurdsson et al teach a method as claimed except treating at cell mediated skin disorder. Salansky et al teach that treatments for pockmarks – a symptom of acne vulgaris, is also recognized as a treatment for psoriasis. Thus it would have been obvious to employ the acne treatment protocol of Sigurdsson et al, since this is recognized as appropriate for psoriasis, thus producing a method such as claimed.

Regarding claim 15, applicant argues that Salansky teaches “only the treatment of Lupus vulgaris” (emphasis in original). The examiner must respectfully disagree, Salansky also discloses the treatment for psoriasis using the same type of radiation as for treating pockmarks. Thus this argument is not persuasive.

Applicant argues that Sigurdsson et al do not teach a cooling device for cooling the area to be treated nor an arrangement generating an irradiance of greater than  $60 \text{ mW/cm}^2$ . As to the former, the rejection has been amended to include Russell, which teaches such a cooling device. As to the latter, the examiner must respectfully disagree. Sigurdsson et al teach providing an irradiance of  $20 \text{ mW/cm}^2$ , however this is at a distance of 40 cm. Thus at distance less than 23 cm from the lamp irradiance of greater than  $60 \text{ mW/cm}^2$  occurs. Thus applicant's arguments are not persuasive.

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



Shay/DI

August 26, 2003

DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330